

# EXHIBIT

2

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE

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ULTIMA SERVICES CORPORATION,

Plaintiff,

v.

No.

U.S. DEPARTMENT OF AGRICULTURE, 2:20-cv-00041-

U.S. SMALL BUSINESS DCLC-CRW

ADMINISTRATION, SECRETARY OF

AGRICULTURE, and ADMINISTRATOR

OF THE SMALL BUSINESS

ADMINISTRATION,

Defendants.

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VIDEOCONFERENCE DEPOSITION OF

DANNY MANDELL

DATE: Monday, May 16, 2022

TIME: 9:26 a.m.

LOCATION: Remote Proceeding

Washington, D.C. 20005

REPORTED BY: Richard Livengood, Notary Public

JOB NO.: 5230091

<p>5230091</p> <p>Page 2</p> <p>1 APPARENCES</p> <p>2 ON BEHALF OF PLAINTIFF ULTIMA SERVICES CORPORATION:</p> <p>3 MICHAEL E. ROSMAN, ESQUIRE (by videoconference)</p> <p>4 MICHELLE SCOTT, ESQUIRE (by videoconference)</p> <p>5 Center for Individual Rights</p> <p>6 1100 Connecticut Avenue Northwest, Suite 625</p> <p>7 Washington, D.C. 20036</p> <p>8 rosman@cir-usa.org</p> <p>9 scott@cir-usa.org</p> <p>10 (202) 833-8400</p> <p>11</p> <p>12 ON BEHALF OF DEFENDANTS U.S. DEPARTMENT OF</p> <p>13 AGRICULTURE, U.S. SMALL BUSINESS ADMINISTRATION,</p> <p>14 SECRETARY OF AGRICULTURE, and ADMINISTRATOR OF THE</p> <p>15 SMALL BUSINESS ADMINISTRATION:</p> <p>16 JULIET GRAY, ESQUIRE (by videoconference)</p> <p>17 Department of Justice Civil Rights Division</p> <p>18 Employment Litigation Section</p> <p>19 150 M Street Northeast</p> <p>20 Washington, D.C. 20530</p> <p>21 juliet.gray@usdoj.gov</p> <p>22</p> <p>Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>	<p>5230091</p> <p>Page 4</p> <p>1 E X H I B I T S (Cont'd)</p> <p>2 NO. DESCRIPTION PAGE</p> <p>3 Exhibit 0009 Alabama Offer Letter to SBA in Alabama 109</p> <p>4 Exhibit 0010 Acceptance Letter from Alabama to Use the Contractor 112</p> <p>5 Exhibit 0011 Sole Source Letter to Ms. Mackin, General Clerk 118</p> <p>6 Exhibit 0012 Acceptance Letter 121</p> <p>7 Exhibit 0013 Offer Letter to State of Virginia, Administrative Support 125</p> <p>8 Exhibit 0014 Acceptance Letter 133</p> <p>9 Exhibit 0015 Order for Supplies or Services 133</p> <p>10 Exhibit 0016 Letter Written by Mr. Mandell 128</p> <p>11 Exhibit 0017 Contract for Support Services, State of Tennessee 130</p> <p>12 Exhibit 0018 Offer Letter 132</p> <p>13 Exhibit 0019 Modification to Contract 139</p> <p>14 (Exhibits attached.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>
<p>5230091</p> <p>Page 3</p> <p>1 I N D E X</p> <p>2 EXAMINATION: PAGE</p> <p>3 By Mr. Rosman 7</p> <p>4 By Ms. Gray 146</p> <p>5 By Mr. Rosman 154</p> <p>6 By Ms. Gray 158</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 NO. DESCRIPTION PAGE</p> <p>10 Exhibit 0001 Decision Memo 46</p> <p>11 Exhibit 0002 Document Signed by Witness, Offer Letter 61</p> <p>12 Exhibit 0003 E-mail Chain 66</p> <p>13 Exhibit 0004 Adverse Impact Determination Letter 75</p> <p>14 Exhibit 0005 Offer Letter for Kentucky NRCS 87</p> <p>15 Exhibit 0006 Acceptance Letter from SBA Allowing to Proceed 99</p> <p>16 Exhibit 0007 Letter, July 9 to Mr. White, Sole Source Offer Letter 102</p> <p>17 Exhibit 0008 Letter of Service and Acceptance of Offer 108</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>	<p>5230091</p> <p>Page 5</p> <p>1 P R O C E E D I N G S</p> <p>2 THE REPORTER: My name is Richard</p> <p>3 Livengood; I am the reporter assigned by Veritext to</p> <p>4 take the recording of this proceeding. We are now on</p> <p>5 the record at 9:26 a.m.</p> <p>6 This is the deposition of Danny Mandell</p> <p>7 taken in the matter of Ultima Services Corporation vs.</p> <p>8 United States Department of Agriculture, United States</p> <p>9 Small Business Administration, Secretary of</p> <p>10 Agriculture, and Administrator of the Small Business</p> <p>11 Administration on May 16, 2022, remote via Zoom</p> <p>12 meeting.</p> <p>13 I am a notary authorized to take</p> <p>14 acknowledgements and administer oaths in Maryland.</p> <p>15 Parties agree that I will swear in the witness</p> <p>16 remotely, outside of his or her presence.</p> <p>17 Additionally, absent an objection on</p> <p>18 the record before the witness is sworn, all parties</p> <p>19 and witness understand and agree that any certified</p> <p>20 transcript produced from the recording, virtually, of</p> <p>21 this proceeding:</p> <p>22 - is intended for all uses permitted</p> <p>Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>

1       **Q** Did -- during the course of the conversation  
 2       that you had with your supervisors, did they say  
 3       anything that indicated that they had the same  
 4       understanding?

5       A I believe so. They didn't understand why.

6       **Q** Okay. All right.

7       A So.

8       **Q** All right. Why don't we go back to Exhibit  
 9       Share, and let's just take a look one brief moment  
 10      again at Exhibit 4. Okay. And this is a letter from  
 11      the district director, Terri Denison, to you,  
 12      basically saying that the SBA would not recommend  
 13      acceptance of the contract into the 8(a) program  
 14      because of adverse impact.

15      A Yes. That's what the letter's saying.

16      **Q** Were you done with your answer?

17      A Yes, sir.

18      **Q** Okay. Good. All right. So why don't we go  
 19      back to Exhibit Share. And this is to -- I'm sorry.

20      One more question. This is dated September 20; right?

21      A Yes. That's correct.

22      **Q** Okay. Let's go to Exhibit 5, please.

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1       with Ausdanbrook Properties during the period of time  
 2       that you were communicating with the SBA about any  
 3       adverse impact analysis?

4       **A** No. Not in, not in reference to the adverse  
 5       impact analysis. I have talked to them but not in, in  
 6       reference to that.

7       **Q** Okay. Okay. Well, did you talk to them  
 8       about the requirement, generally, that -- for support  
 9       services in Mississippi?

10      **A** Correct. But not specifically.

11      **Q** Let me try that again. Did you -- so from  
 12      the time that you sent the offer letter to the SBA  
 13      'til the time that Ms. Denison wrote to you about the  
 14      adverse impact, were you in communication with  
 15      Ausdanbrook Properties about the Mississippi  
 16      requirement?

17      **A** No.

18      **Q** Okay. You didn't speak to them at all  
 19      during that period of time?

20      **A** No. Only initially when I asked them if  
 21      they had the, if they could meet such type of  
 22      requirement.

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1       **(Exhibit 0005 was marked for  
 2       identification.)**

3       A Okay. This is to Washington, D.C., SBA.

4       **Q** Okay. Okay. And so why don't you tell us  
 5       what this document is, if you recognize it.

6       A It's also an offer letter.

7       **Q** And what is it an offer letter for?

8       A Thirty-seven program support specialists for  
 9       Kentucky.

10      THE REPORTER: Can you repeat that,  
 11      please?

12      THE WITNESS: It says here for 37  
 13      program support specialists for Kentucky NRCS. In  
 14      Kentucky.

15      THE REPORTER: Thank you.

16      BY MR. ROSMAN:

17      **Q** Was it for Kentucky, though?

18      A No. This is for Mississippi.

19      **Q** And is this the same requirement that we saw  
 20      in Exhibit 2?

21      A Yes. It is but on a different template.

22      **Q** Okay. By the way, had you been in contact

1       **Q** Right. Did they ever withdraw their offer?

2       A No, because they can't submit an offer yet  
 3       and the, and get an SBA acceptance letter.

4       **Q** Well, I guess I'm asking you whether  
 5       Ausdanbrook Properties, during this period of time,  
 6       communicated to you to tell you that they were no  
 7       longer interested in that requirement.

8       **A** No.

9       **Q** Okay. All right. Who is Ms. Mackin?

10      A One second. My Internet's going down.  
 11      Ms. Mackin, I believe, is a, a, is another  
 12      SBA representative in a different state.

13      **Q** Why were you writing to her?

14      A Why was -- after we talked about it,  
 15      supervisor said try getting SBA, explain them the  
 16      situation, and tell them that you had a adverse impact  
 17      when you, you had a talk with the other SBA office,  
 18      and see what they will come up with.

19      **Q** So you thought they just might, you could  
 20      just write to a different SBA office and maybe get a  
 21      different result?

22      MS. GRAY: Object to form.

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1 A No. That wasn't for the purpose of that.  
 2 Q Okay. Why were you writing to Ms. Mackin?  
 3 A Purpose of writing to Ms. Mackin -- or I'm  
 4 not sure if she was the one that called directly --  
 5 explained that I have initially talked different SBA  
 6 in Georgia and informed, and they informed me that --  
 7 I told them why -- I -- what, what kind of requirement  
 8 I have and the, on the phone that our discussion  
 9 was -- this will be an adverse impact on the contract,  
 10 on that contract if we awarded to an 8(a).

11 After my conversation -- that was before my  
 12 conversation with my supervisor. My supervisor told  
 13 me to get hold of the SBA, see what they say, inform  
 14 them of the conversation, inform them about the  
 15 adverse impact. Why wouldn't you? But that's the  
 16 reason why that letter was sent out. The -- what they  
 17 would -- what would they find versus what Georgia SBA  
 18 office find.

19 Q I'm a little unclear about that, so let's,  
 20 let me just ask a few more questions. What did you  
 21 understand the part of SBA that Ms. Mackin was working  
 22 for to be?

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1 A No. That wasn't the purpose of that. We  
 2 were -- the purpose was us trying to find out whether  
 3 what, another SBA will come up with the same results.

4 Q So having received a determination by the  
 5 Georgia district office that there had been adverse  
 6 impact, you wanted to see whether a different SBA  
 7 office would arrive at a different determination; is  
 8 that right?

9 MS. GRAY: Object to form.

10 A I didn't get the letter. It was through  
 11 conversation by phone.

12 Q With whom?

13 A With Ms. Collins.

14 Q I'm sorry. What did Ms. Collins say in this  
 15 phone conversation?

16 A When I finally got in contact with Ms.  
 17 Collins, we were talking about the adverse impact.  
 18 She was saying that there would be an adverse impact  
 19 if, if we approved the offer letter. And I asked her  
 20 why because the contract's ending September 30th. We  
 21 can no longer execute a task order under that  
 22 contract. And that's when -- after that conversation

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1 A That Mackin is working to be?  
 2 Q Let me try that again -- let me ask -- let  
 3 me just ask the question again. Ms. Mackin was  
 4 working for a different district office; right?

5 A Okay. That's correct.

6 Q Okay. And your proposed 8(a) contractor  
 7 initially was Ausdanbrook Properties; right?

8 A Correct.

9 Q And you would normally write an offer letter  
 10 to the SBA office that supervised the proposed 8(a)  
 11 contractor for a sole source 8(a) contract; is that  
 12 right?

13 A That's correct within that state.

14 Q Okay. And in this case that was the Georgia  
 15 office; right?

16 MS. GRAY: Object to form.

17 A Right. The state of Georgia.

18 Q Say it again.

19 A That's correct. State of Georgia.

20 Q Okay. Did you understand that Ms. Mackin  
 21 could overrule the determination that had been made in  
 22 the state of Georgia district office?

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1 that's when I went to my supervisor and explained to  
 2 them about the adverse impact study that was done by  
 3 Ms. Collins.

4 Q Okay. I'm still not at the point where I  
 5 understand why you were writing to Ms. Mackin. Was it  
 6 your understanding that a different SBA district  
 7 office could come up with a different conclusion as to  
 8 whether there was or was not adverse impact?

9 MS. GRAY: Object to form.

10 A That's correct.

11 Q You thought they, it could; right?

12 A We wanted to know what the, what kind of,  
 13 what, what was the main reason that Georgia came up  
 14 with adverse impact 'cause we did not understand it.

15 Q Well --

16 A The reason for it. Explained to Ms. Collins  
 17 that I don't understand why there would be an adverse  
 18 impact when the contract, as of September 30, no more  
 19 viable, is no longer viable.

20 Q Was it your understanding that you could  
 21 appeal the decision of the Georgia district office to  
 22 some other part of the SBA?

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1 have to use a, the, the, that IDIQ to fulfill that  
 2 requirement by using task orders executed against it.

3     **Q** So did the IDIQs guarantee that Ultima would  
 4 get all admin work at NRCS offices?

5     **A** It's a priority to the IDIQ but doesn't  
 6 guarantee it.

7     **Q** And how -- what do you mean by that?

8     **A** Even though we -- and even though we have an  
 9 IDIQ, doesn't necessarily -- it's not a -- I mean, we,  
 10 we -- it's a priority, but in addition if we believe  
 11 there's only, like, one or two requirements, so  
 12 instead of using that IDIQ vehicle and just competed.

13     **Q** Okay.

14     **A** And -- oh. Okay. Never mind.

15     **Q** Mr. Rosman asked you some questions about  
 16 whether it would've been possible to extend Ultima's  
 17 task order so that there would be time to bid it.

18 What is the time limit on extending a task order?

19     **A** Extending a task order?

20     **Q** Yes. Do you recall what I'm talking about?

21     **A** Normally -- we don't normally extend the  
 22 task order.

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1 long as there's still existing funds, we could use, we  
 2 could extend it. But we could only extend it to the  
 3 amount that the funds allows us. No more than that.  
 4 In other words, we can't extend it and put additional  
 5 funds. That would be outside the scope of the  
 6 original contact -- contract.

7     **Q** Okay. When we were discussing after you got  
 8 the adverse impact determination from Georgia, you  
 9 were then shown the offer letter that you sent to the  
 10 D.C. district office. Do you recall that?

11     **A** Which district office, ma'am? The Georgia  
 12 or the Washington?

13     **Q** So after you received the adverse impact  
 14 determination from Georgia, you then sent an offer  
 15 letter to the Washington, D.C. district office; is  
 16 that right?

17     **A** I believe I did not receive that offer  
 18 letter, I mean, that adverse impact letter from  
 19 Georgia before I sent the offer letter --

20     **Q** Okay. Right. Okay. But you had heard from  
 21 them.

22     **A** -- conversation.

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1     **Q** Right. But do you remember we were looking  
 2 at a particular document that mentioned that the  
 3 contract might be extended for two months?

4     **A** Yes.

5     **Q** And then you talked about how you might  
 6 extend it so that you could get another contract in  
 7 place. Do you remember that?

8     **A** Right. Similar to what we saw in "mod" 1.

9     **Q** So --

10     **A** Where it was extended because of the issue  
 11 of onboarding instruction.

12     **Q** So is there -- what is the time limit on  
 13 extending a contract or task order?

14     **A** I believe two months is, is the most. Or is  
 15 it three months?

16     **Q** Okay.

17     **A** I have to look at the regulation for that  
 18 particular extension authorization.

19     **Q** Okay. That's something that would be in the  
 20 FAR?

21     **A** Right. I think it's -- can't -- I don't  
 22 remember what that regulation is. But as long, as

1     **Q** Okay. You had heard --

2     **A** But it was a phone conversation. I'm sorry,  
 3 ma'am.

4     **Q** No. It's okay. I'm sorry I interrupted  
 5 you. I understand. It was -- you heard that on the  
 6 phone. But I believe you testified about a discussion  
 7 you had with your supervisor after that, and I think  
 8 there was some, you know, some delay during that time.  
 9 So I just wanted to confirm that after you received  
 10 the, you learned from Georgia that they were going to  
 11 issue an adverse impact determination, what was the  
 12 conversation that you had with your supervisor about  
 13 approaching D.C.?

14     **A** As -- as I stated earlier, was, we just  
 15 couldn't understand -- and that -- and same question I  
 16 had for Ms. Collins was that why would you, why would  
 17 there be an adverse impact when the contract is no  
 18 longer viable and would be ending? And similar  
 19 discussion was brought up with my supervisor, the same  
 20 thing. That was our conversation.

21     **Q** And when you spoke with the D.C. district  
 22 office, did you tell them about the adverse impact

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1 determination from Georgia?

2 A Yes. I called them up, like I also called  
3 up the SBA and -- when I need a requirement. I, I  
4 told them exactly what I need and, or what the issue  
5 is.

6 MS. GRAY: Okay. I don't have any  
7 further questions.

8 MR. ROSMAN: I just have one or two  
9 more.

10 EXAMINATION

11 BY MR. ROSMAN:

12 Q So you spoke with the Washington, D.C.,  
13 office concerning the adverse impact determination  
14 that had been made by the Georgia district office;  
15 right?

16 A I believe so, because when my conversation  
17 with my supervisor, they did remind me, make sure that  
18 you inform them of the recent issue.

19 Q Okay. And what did they say when you told  
20 them that?

21 A I think the statement was, if, we will  
22 check, we will do our evaluation. If there is an

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1 my supervisor and the fact that if we got less than  
2 two weeks before the end of the year, I believe it was  
3 my supervisor that gave me the name of the All-Pro and  
4 said, "Try these guys, but here's the SBA office.  
5 Give them a call. Explain what's going on. See what  
6 they say."

7 Q Okay. But why did using All-Pro require you  
8 to write to the office in the District of Columbia?

9 A 'Cause All-Pro belongs to, under the SBA  
10 office in District of Columbia.

11 Q Why is that? Why?

12 A What -- what do you mean, why?

13 Q Why?

14 A Why is that?

15 Q Why do they belong to the district of the  
16 District of Columbia?

17 A They, they belong the jurisdiction -- for  
18 the District of Columbia, not Georgia.

19 Q But, in fact, didn't the district of the  
20 District of Columbia transfer the entire offer to a  
21 different district office?

22 A I don't remember. I don't have any document

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1 adverse impact, we will let you know; if not, if  
2 there's not an adverse impact, we'll send you an  
3 acceptance letter. And that's the same thing I  
4 communicated to my supervisors.

5 Q So the district office in the District of  
6 Columbia didn't feel bound by any determination that  
7 had been made by the district office in Georgia.

8 MS. GRAY: Object to form.

9 BY MR. ROSMAN:

10 Q Is that right?

11 A Well, I'm, I'm not sure, sir.

12 Q Well, they said they were going to do their  
13 own analysis; right?

14 A Right. But I'm not sure where -- like I  
15 said, I'm not part of their, anticipating how they do  
16 this stuff. So.

17 Q Okay.

18 A All I could do is provide the information.

19 Q Why, again, did you write to the district  
20 office in Washington, D.C.?

21 A After our, after we, after my phone call  
22 with Ms. Collins on that -- my explanation we had with

1 that shows that. I don't believe they would.

2 Q Well, why don't we take a look at Exhibit 6  
3 again, please.

4 A Exhibit 6. Okay. Baltimore district  
5 office. Maryland.

6 Q Right. So --

7 A Okay. Yeah. It's Maryland.

8 Q Apparently Ms. Mackin in the Washington,  
9 D.C., district office didn't handle the offer letter;  
10 right?

11 A That is correct from the what I see now.  
12 Yeah -- look like --

13 Q So why did you send it to the Washington,  
14 D.C., district office?

15 A Because they were the people I was working  
16 with. I initially thought that All-Pro Placement  
17 Services -- I probably thought that the All-Pro  
18 Placement Services was under Washington district  
19 office.

20 Q Well, the All-Pro Placement Services has an  
21 address in Cockeysville, Maryland; right?

22 A Right.

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